IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 302 OF 1995

Eknath Gangadhar Bagul
Age 45 years, R/o. Kharde,
Tal. Kalwan, Dist. Nashik ...Appellant.

Versus

The State of Maharashtra ...Respondent

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Shri. B.G. Vaidya, Advocate for the appellant.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 15TH SEPTEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant challenges the judgment and order dated 19.5.1995 passed by the Additional Sessions Judge, Nasik in Sessions Case No.189 of 1994. By the said judgment and order, the appellant came to be convicted for the offence under Section 324 and 323 of I.P.C. and was sentenced to suffer R.I.for one year on both counts and to pay fine of Rs.1,000/- i/d R.I. for three months.

2. The prosecution case briefly stated is as under:-

. It is the prosecution case that the complainant P.W.5 Dadaji Kalu Deore is resident of village Kharde, Tq. Kalwan, Dist. Nasik. He alongwith his parents and brothers resided in the said village. The complainant is having a field named "Chorkhadi" which is situated in village Kharde. The complainant and his family members cultivate the said land. The said land is adjoining to the field of appellant and there is a common Bandh between the two fields. On account of common Bandh there was a dispute between the complainant and his family members and the appellant. On account of this dispute about two years prior to the incident a Criminal case was filed by the appellant against the complainant P.W.5 Dadaji Deore, his father and his brothers. The said case was pending before the Court at Kalwan.

. On 23.6.94 P.W.5 Dadaji Deore, his father and brothers went to Kalwan Court for attending the case which was filed by the appellant. They were sitting near the Court premises. At about 1.45 p.m. the appellant came there with a sickle in his hand and all of sudden he assaulted P.W.5 Dadaji Deore on his head. The appellant tried to give second blow on the head but the complainant avoided the same and he suffered injury on his left hand.

P.W.6 Bhausaheb Kalu Deore i.e. the brother of Dadaji Deore rushed to separate Dadaji Deore and the appellant. While doing so Bhausaheb sustained injury on his right hand. On account of this incident, crowd collected and the appellant came to be caught alongwith sickle. Thereafter, the complainant Dadaji Deore, his father and brothers went to Kalwan police station. Then, they were sent to hospital for medical treatment. Thereafter, P.W.5 Dadaji Deore lodged his complaint (Exh.28) against the appellant. The said complaint was registered as C.R.No. 80/1994. Thereafter, investigation commenced.

. As stated earlier the complainant P.W.5 Dadaji Deore, his brother P.W.6 Bhausaheb Deore as well their father were sent for medical examination. P.W.1 Dr. Nitin Ravate was attached to Kalwan Cottage Hospital at the relevant time. On 23.6.94, police have referred P.W.5 Dadaji Deore, P.W.6 Bhausaheb Deore to Dr. Ravate for medical examination. On examining P.W.5 Dadaji Deore, he found the following injuries on his person.

a) Incised wound over the right parietal region, measuring about 5 x 0.5 cms, clean-cut edges, bone-deep.

b) Incised wound over left forearm on flexor aspect 5 x 1.5 fm, muscle deep, clean-cut edges.

c) Abrasion over right forearm, flexor aspect, in its lower 1/3, measuring about 2 x 3 cms.

Bleeding was present through all the above wounds.

. On examining Bhausaheb Deore, Dr. Ravate found following injuries on his person.

a) Wound over right forearm, flexure aspect, lower 1/3rd, 5 x 5 cms, skin lost, only tag present, skin-tag non-viable, muscle deep wound, edges clear-cut bleeding present through the wound.

. Medical certificate pertaining to the injury to P.W.5 Dadaji Deore is at Exh.12 and the medical certificate pertaining to the injury to Bhausaheb

Deore is at Exh.13.

2-a. After completion of investigation, charge sheet came to be filed against the appellant for the offence under Sections 307, 324, 323 of I.P.C. In the due course, the case came to be committed to the Court of Sessions.

3. The charge came to be framed against the appellant under Sections 307, 324 and 323 of I.P.C. The defence of the appellant is that of total denial and false implication. During the course of trial, the prosecution has examined in all 12 witnesses. P.W.5 Dadaji Deore and P.W.6 Bhausaheb Deore are the injured witnesses. After going through the evidence adduced by the prosecution, the learned Sessions Judge acquitted the appellant of the offence under Section 307 of I.P.C. however, the appellant came to be convicted for the offence under Sections 324 and 323 of I.P.C. Hence, this appeal.

4. I have heard Shri. Vaidya, learned advocate for the appellant and Shri. Shitole, learned A.P.P. for the State. I have also gone through the entire evidence on record as well as the judgment and order passed by the learned Sessions Judge. In my view, the learned Sessions Judge has

rightly convicted the appellant under Sections 324 and 323 of I.P.C.

5. The evidence adduced by the prosecution can be divided under four heads:-

a) Evidence of injured witnesses i.e. P.W.5 Dadaji Deore and P.W.6 Bhausaheb Deore.

b) Evidence of eye witnesses i.e. P.W.4 Smt. Mangala Sonwane and P.W.7 Vinayak Pardeshi.

c) Evidence of P.W.11 Namdeo Bhoye who apprehended the appellant on the spot.

d) Seizure of the blood stained sickle alongwith seizure of blood stained clothes of the accused.

6. The prosecution has examined two injured witnesses in the present case they are P.W.5 Dadaji Deore and P.W.6 Bhausaheb Deore. Dadaji Deore has stated that there was a dispute regarding a common

Bandh in between the appellant accused and this witness and his family. On account of this dispute, the appellant had earlier filed criminal case against the complainant Dadaji Deore, his father and two brothers. The said case was pending in Kalwan court. The complainant Dadaji Deore has further stated that on the date of the incident i.e. on 23.6.94 he alongwith his father and two brothers had gone to Kalwan Court to attend the said criminal case. They reached there at about 1.30 p.m. They were sitting near the court premises, within five minutes appellant came there with a sickle and assaulted him on his head with the sickle. The appellant was about to give second blow when Dadaji obstructed the blow with his left hand due to which he received injury on the left hand. His brother Bhausaheb (P.W.6) came to rescue him. At that time Bhausaheb received an injury on his right hand. At that time police constable Bhoye (P.W.11) caught the appellant from behind. When the father of Dadaji came there, the appellant gave him a kick blow on his stomach. Thereafter, police constable Bhoye (P.W.11) and 2/3 others took the appellant to the police station. The complainant, his father and brothers also went to the police station. From the police station they were sent to the hospital. In the hospital, police recorded the statements of Dadaji Deore (Exh.28).

This witness has identified sickle (Article 1). Nothing has been brought out in the cross examination of this witness so as to disbelieve his testimony. The evidence of this witness is supported in all material particulars by the evidence of another injured witness i.e. P.W.6 Bhausaheb Deore. I find the evidence of both these witnesses to be cogent, consistent and reliable.

7. Besides, the two injured witnesses, prosecution has also examined two eye witnesses. P.W.7 Vinayak Pardeshi was the Peon in Kalwan Court. He has stated that he knew the appellant as well as the complainant and his brothers as they used to come to Kalwan court for attending their criminal case. Vinayak Pardeshi has stated that on 23.6.94 at about 1.45 p.m. he saw the appellant come running and assaulting Dadaji Deore by a sickle on his head. While giving second blow Dadaji Deore avoided blow by his left hand and he received injury on his left hand. This witness called constable Bhoye (P.W.11). Constable Bhoye came there and caught accused from behind. P.W.4 Mangala Sonwane had come to Kalwan Court to attend her case U/sec. 125 of Cr.P.C.. Mangala Sonwane has stated that she had seen the appellant coming with sickle and assaulting Dadaji Deore on his head. She has stated that Dadaji sustained injury

on his head and hand. The brother of Dadaji Deore had come to the rescue of Dadaji and he also sustained injury on his hand. One police man namely Bhoye immediately came there and caught the accused. Thereafter, accused was taken to the police station. She has also identified the sickle. Nothing has been elicited in the cross examination of both these witnesses so as to disbelieve their testimony. Both P.W.7 Vinayak Pardeshi and P.W.4 Mangala Sonwane are independent witnesses. Both of them did not have any animus, grudge or enmity with the appellant, in such case there was no reason for them to falsely involve the appellant in this case. I find their testimony to be totally trustowrthy and reliable.

8. Police constable Bhoye (P.W.11) was on Court duty on 23.6.94. He has stated that at about 1.45 p.m. he heard shouts and he saw the appellant with a sickle in his hand about to give blow to Dadaji Deore. Hence, Bhoye caught the appellant from behind. P.W.11 Bhoye has further stated that Dadaji was having injury on his head and left hand and Bhausaheb Deore was having injury on his right hand. Thereafter, with the help of other constables he brought the appellant to the police station. When the appellant was brought to the police station, sickle came to be seized under

panchanama. P.W.2 Anil Shinde is the panch witness in relation to seizure of sickle (Article-1). The said panchanama is at Exh. 21. P.W.2 Anil Shinde has also stated that clothes of the appellant came to be seized (Article 2 and 3). Anil Shinde has identified the sickle as well as the clothes which were seized from the person of the appellant. The said clothes and sickle were sent to the C.A. and as per the C.A. report (Exh.41) sickle as well as the clothes were found to be stained with blood of "O" Group. Blood group of Dadaji is also of "O" group. Blood group of Bhausaheb is also "O" group. Thus, this is another circumstances which connects the appellant to the crime.

9. Besides this, the prosecution has examined P.W.8 Bhausaheb Kuvar. Bhausaheb Kuvar is a Blacksmith by profession. He has stated that he knows the appellant as they resided in the same village. Bhausaheb Kuvar has stated that he had given the sickle (Article 1) to the appellant. He has identified the said sickle. It is also pertinent to note that the fact that injuries were caused by the appellant with the said sickle (Article-1) is also supported by the medical evidence. P.W.1 Dr. Ravate examined Dadaji Deore and Bhausaheb Deore. On examining Dadaji Deore and Bhausaheb Deore, he found the injuries on their

persons which are reflected in para 2 of this judgment. The said injuries are consistent with the use of sickle.

10. Thus, in the present case, there is enough evidence on record to show that the appellant has caused injuries to Dadaji Deore and Bhausaheb Deore by means of sickle. Thus, in my opinion, the learned Sessions Judge has rightly convicted the appellant under sections 324 and 323 of I.P.C.

11. At this stage, the learned advocate for the appellant has submitted that the incident had occurred in June, 1994 i.e. more than 10 years ago. He has submitted that the family members of the appellant are dependant on him. He has further submitted that the appellant is on bail and during the period of last 9 to 10 years there is nothing to show that any untoward incident has taken place between the appellant and the family of the complainant. He has further pointed out that nowhere in his examination in chief Doctor has stated that the injuries to any of the injured witnesses were serious or grievous in nature. Shri. Vaidya, the learned advocate for the appellant has drawn my attention to the injuries as reflected in medical certificates of both these injured witness and has submitted that the said

injuries are simple in nature. On perusal of the said medical certificates it does appear that the injuries caused to both these witnesses are simple in nature. Lastly Mr. Vaidya has submitted that looking to all these facts, the sentence imposed upon the appellant may be reduced to the period already undergone by him and the appellant may be directed to pay higher amount of fine.

12. Looking to the fact that more than 10 years have elapsed since the incident and that though the appellant and the complainant and his family members are neighbours, no untoward incident has been reported between them in the said period and looking to the other facts and circumstances of the case, I am inclined to reduce the sentence of imprisonment to the period already undergone by the appellant. However, I am inclined to increase the fine amount of Rs.1,000/- on each count to Rs.3,000/- on each count that means the appellant would pay total fine of Rs.6,000/-. In case the earlier fine of Rs.1,000/- under each head has been deposited by the appellant, the appellant would have to deposit balance fine amount of Rs.2,000/- under each head i.e. additional fine amount of Rs.4,000/-. On the request of the learned advocate for the appellant, eight weeks time is granted to deposit the fine amount. It is clarified that in

default sentence is maintained under both the counts.

13. Criminal appeal is partly allowed.